

G. H. MONK

IBLA 80-421

Decided May 13, 1980

Appeal from decision of the California State Office, Bureau of Land Management, declaring Russ I and Russ II placer mining claims abandoned and void. CA MC 62540.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --  
Federal Land Policy and Management Act of 1976: Recordation of  
Mining Claims and Abandonment -- Mining Claims: Recordation

The owner of an unpatented mining claim on Federal lands located prior to Oct. 21, 1976, had until Oct. 22, 1979, to record the location in the proper BLM office. Recordation is effected by filing a copy of the official record of the location notice or certificate with the proper BLM office and payment of a service charge of \$5 per claim.

2. Federal Land Policy and Management Act of 1976: Generally --  
Federal Land Policy and Management Act of 1976: Assessment Work  
-- Federal Land Policy and Management Act of 1976: Recordation of  
Affidavit of Assessment Work or Notice of Intention to Hold Mining  
Claim -- Federal Land Policy and Management Act of 1976:  
Recordation of Mining Claims and Abandonment -- Mining Claims:  
Recordation

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee.

As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid.

3. Federal Land Policy and Management Act of 1976: Generally --  
Federal Land Policy and Management Act of 1976: Recordation of  
Affidavit of Assessment Work or Notice of Intention to Hold Mining  
Claim -- Mining Claims: Recordation

The owner of an unpatented mining claim on Federal land located prior to Oct. 21, 1976, had to file in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of such recordation, whichever date is earlier, evidence of annual assessment work performed during the preceding assessment year, or a notice of intention to hold the mining claim.

4. Federal Land Policy and Management Act of 1976: Generally --  
Federal Land Policy and Management Act of 1976: Recordation of  
Affidavit of Assessment Work or Notice of Intention to Hold Mining  
Claim -- Federal Land Policy and Management Act of 1976:  
Recordation of Mining Claims and Abandonment -- Mining Claims:  
Recordation

Failure to comply with the regulations governing recordation of notice of location or assessment work or notice of intention to hold mining claims must result in a conclusive finding that the mining claim has been abandoned and is void.

APPEARANCES: Edward Mosk, Esq., Los Angeles, California, for appellant.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

G. H. Monk appeals the February 4, 1980, decision of the California State Office, Bureau of Land Management (BLM), declaring the Russ I and Russ II placer mining claims abandoned and void for failure to timely file instruments relating to the subject mining claims, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulations in 43 CFR 3833.1-2(a).

On February 7, 1949, Carol Bowers and seven other persons located the Russ I and Russ II placer mining claims, comprising the N 1/2 sec. 15, T. 4 N., R. 14 W., San Bernardino meridian, Los Angeles County, California. G. H. Monk appears as lessee and agent of the locators.

On October 20, 1979, Monk submitted to BLM an instrument purporting to reflect the location data of the Russ I and Russ II placer mining claims, together with a sketch map showing the situs of the claims. The papers were returned to Monk with advice from BLM that a service fee of \$5 per claim was required. The BLM transmittal further stated that failure of the mining claimant to file the instruments required by FLPMA and set forth in the regulations, 43 CFR 3833.1 and 43 CFR 3833.2, shall be deemed conclusively to constitute abandonment of the mining claims and they shall be void. On January 7, 1980, Monk resubmitted the same instruments to BLM with a money order in the amount of \$10 for the two claims. BLM again refused to accept the documents for recordation and returned them with the decision of February 4, 1980. This appeal followed.

Appellant states that he is in United States Veterans Hospital under treatment for cancer. He made the filings as representative of the owners of the Russ I and Russ II claims and inadvertently neglected to include the service fee of \$5 per claim with his original submission. He argues that the rejection of his original timely filing is arbitrary, unreasonable, and a denial of due process of law. He asserts in his appeal that the annual assessment work has been done each year since location of the claims in 1949.

[1, 2] The owner of an unpatented mining claim located prior to October 21, 1976, had until October 22, 1979, to record the location with BLM. FLPMA, section 1744(b); 43 CFR 3833.1-2(a). Recordation is effected by filing a copy of the official record of the location notice or certificate with the proper BLM office, 43 CFR 3833.1-2(a), and payment of a service fee of \$5 per claim, 43 CFR 3833.1-2(d). The payment of the service fee is a mandatory requirement. Without payment of the service fee, there is no recordation. Thus, as the service fee for the Russ I and Russ II location notices was not tendered until January 7, 1980, it must be held that recordation of these claims with BLM cannot be considered to have occurred before that date. Joe B. Cashman, 43 IBLA 239 (1979).

[3] Although not mentioned in the decision on appeal, but adverted to with the initial return of the papers relating to the Russ I and Russ II claims, 43 CFR 3833.2-1(a) requires that owners of mining claims located prior to October 21, 1976, on Federal lands shall have filed in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recordation, whichever is earlier, evidence of annual assessment work performed during the preceding assessment year

or a notice of intention to hold the mining claim. This requirement is mandatory.

[4] Failure to comply with the regulations governing recordation of information relating to unpatented mining claims must result in a conclusive finding that the claim has been abandoned. FLPMA section 1744(c); 43 CFR 3833.4(a); Joe B. Cashman, *supra*; Walter R. Paul, 43 IBLA 119 (1979). The Russ I and Russ II placer mining claims must be deemed conclusively to be abandoned and void for failure to have recorded the mining claim location notices on or before October 22, 1979, and for failure to submit on or before October 22, 1979, evidence of assessment work performed or notice of intention to hold the mining claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Joan B. Thompson  
Administrative Judge

